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Letter dated 27 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached addendum to the fourth report from Kazakhstan (S/2004/658) submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 23 December 2004 from the Permanent Representative of Kazakhstan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In addition to my letter dated 19 November 2004, I have the honour to forward to you the addendum to the fourth report of the Republic of Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

This supplement fully addresses the questions and comments contained in the letter from the Chairman dated 19 May 2004.

(*Signed*) Yerzhan **Kazykhanov**

Enclosure

[Original: Russian]

Addendum to the fourth report of the Republic of Kazakhstan to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Implementation measures

1.1 Article 193 of the Criminal Code of the Republic of Kazakhstan provides for criminal liability for carrying out financial operations and other transactions involving funds or other assets knowingly acquired by illegal means, and also for the use of such funds and assets. With regard to criminal liability for the wilful provision or collection of funds in order to carry out terrorist acts, it should be noted that under the legislation in force, there are no provisions which would allow for direct criminal prosecution of persons involved in collecting funds, in any form, for terrorist acts.

There are plans, however, to introduce amendments and additions to this article, providing for criminal liability for the use of funds or other assets, regardless of their origin, for the financing of terrorism.

1.2 The term "recruitment" under national law refers to an act which is liable to criminal prosecution under article 162 of the Criminal Code. Thus, in accordance with this article, the recruitment, training, financing or other material support of a mercenary, and also the use of mercenaries or their participation in armed conflict or military action, are prohibited.

Under part 2 of this article, criminal liability is envisaged for the same actions committed by a person using his official position or in relation to a minor.

The deception of a prospective mercenary by a recruiter as a means of committing a crime is not envisaged under the existing criminal law of Kazakhstan.

As to the question indicated in the second subparagraph, it may be noted that the list of criminal actions classified as mercenarism is exhaustive, and is indicated above.

With regard to inciting persons to pursue the goals of terrorist organizations, under the criminal law of Kazakhstan there are provisions which make it possible to institute criminal proceedings against persons who carry out recruitment for terrorist purposes, and against mercenaries themselves.

Article 233-2 of the Criminal Code establishes liability for the establishment of a group to commit crimes in pursuit of terrorist goals (a terrorist group) and also its leadership, or participation in the activities of a terrorist group or in acts of terrorism perpetrated by it.

On the question of the liability of persons recruited to participate in the activities of terrorist organizations but deceived about the nature and goals of the organization, it should be noted that under national law a requirement for incurring any form of liability, including criminal liability, is the establishment of guilt in

committing an action, i.e. the intention has to be to achieve the goals of terrorist organizations, and it is only on that condition that a person bears criminal liability.

With regard to carrying out activity which is not directly aimed at achieving the goals of a terrorist organization, but contributes to it, it may be noted that the Criminal Code establishes liability for any form of participation in the activities of terrorist organizations. Thus, not only perpetrators, but also organizers, instigators and accomplices are prosecuted.

Thus, the legislative acts of the Republic cover all ways and means of controlling mercenarism in Kazakhstan, in a sufficiently broad and comprehensive manner.

1.3 The legal norms governing the procedure for freezing the financial assets and economic resources of persons or entities which are owned or controlled directly or indirectly by persons who commit or attempt to commit terrorist acts or participate in their commission are set forth in the bill drawn up by the Office of the Procurator-General on preventing the legalization (laundering) of profits obtained by illegal means and the financing of terrorism. The bill is currently under consideration by Parliament.

This bill provides for the establishment of an authorized agency responsible for carrying out financial monitoring and control of monetary transactions.

The authorized agency is the Financial Monitoring Committee attached to the Office of the Procurator-General.

The authorized agency would be given the authority to take specific steps to prevent the legalization (laundering) of criminal profits, in particular, to halt the movement of monetary resources by entities of the financial system and the alienation of assets when carrying out transactions involving the legalization of profits obtained by criminal means.

The provisions of articles 5, 8 and 18 of the International Convention for the Suppression of the Financing of Terrorism have been fully reflected in the Counter-Terrorism Act of 13 July 1999 (art. 21). In addition, on 15 October 2004, by a decision of the Supreme Court, a list of terrorist organizations whose activities are prohibited in Kazakhstan was adopted. The list includes Al-Qaida, the Islamic Party of Turkistan, the Islamic Party of East Turkistan and the Kurdish National Congress (Kongra-Gel).

Kazakhstan has acceded to 11 of the 12 international framework conventions on counter-terrorism. The machinery has been set in motion for the completion of the domestic procedures required for accession to the Convention on the Physical Protection of Nuclear Material (1980). A bill on the accession of the Republic of Kazakhstan to the Convention on the Physical Protection of Nuclear Material has been agreed upon with all the central executive agencies concerned and sent to Parliament for consideration.

In view of the need for the further effective implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), and also with a view to the prevention of unlawful acts in connection with the protection of ships and port installations, Kazakhstan has begun procedures for accession to the International Ship and Port Security Code, adopted under the auspices of the International Maritime Organization. In the international seaport of

Aktau (Caspian Sea), the requisite border and customs controls have been established and are in operation.

Within the framework of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988) and also bearing in mind the continuing acute problem of combating air terrorism, Kazakhstan is taking the necessary steps to strengthen security measures for air transport and at airports serving international civil aviation, including through the enhancement of the work of the aviation security services at airports.

Effectiveness in the protection of financial systems

1.4 The existing legislation of the Republic makes it possible, in the context of criminal prosecution, to freeze the accounts of entities which are owned or controlled directly or indirectly by persons who commit or attempt to commit terrorist acts or participate in or facilitate their commission. With regard to the freezing of funds that are suspected of being linked to terrorism, it may be noted that provisions for freezing such funds will be included in the bill on preventing the legalization (laundering) of profits obtained by illegal means and the financing of terrorism. In addition, funds and assets of individuals and entities included in the list established by the Security Council Committee established pursuant to resolution 1267 (1999) are frozen in the territory of Kazakhstan.

1.5 There are no such provisions in the legislation in force in Kazakhstan. However, they will be taken into account and included in the relevant laws and regulations.

With regard to requests from foreign States to investigate the activities of specific organizations, the law enforcement agencies carry out the relevant operational investigations in accordance with requests from foreign States made through the Ministry of Internal Affairs.

Effectiveness of counter-terrorism

1.6 The procedure and mechanism for ensuring the security of persons participating in the criminal process, including in cases involving terrorist activity, are regulated by the provisions of chapter 12 of the Code of Criminal Procedure, the Act "On State protection of persons participating in the criminal process", of 5 July 2000, and the Counter-Terrorism Act, of 13 July 1999.

In these regulatory instruments, there is a list of persons entitled to State protection: judges, jurors, prosecutors, investigators, witnesses, persons carrying out operational investigations, defence attorneys, experts, specialists, court secretaries, bailiffs, victims, witnesses, suspects, accused persons, translators, official witnesses, authorized representatives, representatives, civil plaintiffs, civil defendants, and family members and close relatives of the above-mentioned persons.

The security measures consist of:

(1) Official warning of possible criminal prosecution to persons who have threatened to engage in violence or carry out other acts prohibited under criminal law;

(2) Restriction of access to information about a protected person;

(3) Institution of restraining measures against an accused person (suspect) to avert the possibility of the use (or organization of the use) of violence against persons participating in the criminal process, or violence or the commission (organization of the commission) of other criminal acts;

(4) Removal of persons from the courtroom;

(5) Holding of closed court hearings;

(6) Interrogation of a witness by the court: without releasing information about his identity, through the use of a pseudonym; in a manner excluding the possibility of being recognized; without visual observation by other participants in the court proceedings; with prohibition, if necessary, of the production of video, sound recording or other means of recording the interrogation;

(7) Personal protection, protection of residence and other property;

(8) Provision under the established procedure of weapons, means of individual protection and technical equipment;

(9) Temporary move to a safe location;

(10) Ensuring the confidentiality of information about protected persons;

(11) Transfer to another place of residence, change of work (office) or study location, help in finding a job;

(12) Replacement of documents;

(13) Alteration of appearance.

In accordance with the Counter-Terrorism Act, persons who are in a vulnerable situation in connection with proceedings on cases involving terrorist activity are ensured protection.

Under article 18 of that Act, staff of Government agencies who are directly involved in counter-terrorism activities, and also persons assisting in such activities, and members of their families, who are exposed to threats to life and health, may, at their request, change their appearance, names and also place of work and place of residence using funds allocated for the upkeep of these bodies.

Article 20 provides that a person who has participated in preparing a terrorist act is released from criminal liability if through a timely warning to the Government agencies or other means he has helped prevent a terrorist act and if he has committed no other crime.

1.7 At the request of the competent authorities of other States, Kazakhstan prosecutes in its territory persons involved in terrorist activities, irrespective of the place in which the terrorist acts are committed.

This provision is contained in the Counter-Terrorism Act of 13 July 1999.

The Act also provides that government agencies directly involved in counter-terrorism are obliged to cooperate in combating terrorism with agencies of foreign States and international law enforcement organizations, in accordance with national legislation and international treaties, and to conduct operations and investigations in

the territory of Kazakhstan or of foreign States, in accordance with the international treaties ratified by Kazakhstan.

The procedure for cooperation in criminal matters between the agencies conducting the criminal process and the competent institutions and officials of foreign States is specified in chapter 55 of the Code of Criminal Procedure.

Decisions on whether to execute or send requests for legal assistance are taken by the Office of the Procurator-General, in accordance with articles 523 and 525 of the Code of Criminal Procedure.

Legal assistance is provided both on the basis of the international treaties ratified by Kazakhstan and in accordance with the principle of reciprocity.

Effectiveness of controls preventing access to weapons by terrorists

1.8 (a) Legislation, regulations, administrative procedures

In accordance with the Act "On State control of the circulation of certain types of weapon", licences to develop, produce, repair, trade in, acquire, collect and exhibit weapons and cartridges are general, of unlimited duration and valid throughout the territory of Kazakhstan.

However, for the purpose of implementing the aforementioned Act and the Act "On licensing", the Government, by its Decree No. 1176 of 3 August 2000 "On measures to implement the Act 'On State control of the circulation of certain types of weapon'", approved a model one-off licence for the acquisition of weapons (annex 11 to the Rules), which is valid for only three months from the date of issuance.

We believe that the adoption of these norms is in the interests of national security, will help to avoid the transfer of weapons from licit to illicit circulation and will facilitate the exercise of control over the circulation of weapons since, in order to be issued a one-off licence, applicants must have contracts indicating the quantity and characteristics of the weapons sold (brand, number, country of origin, etc.), which must be registered with the internal affairs agencies.

(b) Export control

The government agency with responsibility for export control is the Ministry of Industry and Trade, which licenses the export and import of goods subject to export controls.

The Rules on the Implementation of Export Controls in the Republic of Kazakhstan were approved by Government Decree No. 1919 of 14 December 1999.

In order to obtain a licence for the export (import) of goods, the exporter (importer) must submit a written application in the established form to the Ministry of Industry and Trade.

This application must indicate:

(1) The exporter (importer) and his/her details;

(2) The buyer (seller) and his/her legal address;

(3) The country of the buyer (seller);

(4) The country of destination (origin) of the goods;

(5) The customs point at which the goods will be declared;

(6) The nature of the transaction and the currency of payment;

(7) The name and quantity of the goods (in physical and cost terms), together with their classification in the control list and their codes in the commodity nomenclature of foreign economic activity;

(8) The contract (number and date of conclusion);

(9) The required period of validity of the licence;

(10) The corresponding permit (number and date of issuance), where government authorization is required for the export (import) of the goods.

The application must be accompanied by:

(1) A copy of the contract (agreement) of purchase, sale or other transfer between the parties to the foreign trade transaction, and the original (for comparison);

(2) A copy of the agreement between the importer and the consumer (end user) of the goods, where an intermediary is acting as importer;

(3) A copy of the certificate of quality (conformity) or the technical characteristics of the exported or imported goods;

(4) A copy of the exporter's (importer's) certificate of State registration (for legal entities);

(5) A copy of the licence to conduct the type of activity concerned, where this type of activity is subject to licensing internally;

(6) Proof of payment of the fee for the licence conferring the right to engage in specific types of activity;

(7) For exported goods, the original end-user import certificate issued by the authorized government agency of the receiving country, which must contain an undertaking by the receiving country that the goods imported from Kazakhstan will be used only for that country's needs and that their re-export or transfer to third countries will not be permitted without the consent of the Kazakh side.

Copies of documents must be certified with the exporter's (importer's) stamp.

The exporter (importer) is responsible for the accuracy of the information submitted to the authorized agency.

The Ministry of Foreign Affairs verifies the authenticity of the importing country's end-user import certificate.

Under the Act "On export control" of 18 June 1996, a permit must be issued by the Ministry of Industry and Trade for the transit of explosives.

For the transit of precursors, permits are issued by the Committee to Combat the Drug Trade and Control the Circulation of Narcotic Drugs of the Ministry of Internal Affairs, in accordance with the Act "On narcotic drugs, psychotropic substances and precursors and measures to combat their illicit trafficking and abuse" of 10 July 1998 and Government Decree No. 1693 of 10 November 2000 approving

the Rules on State Control of the Circulation of Narcotic Drugs, Psychotropic Substances and Precursors in the Republic of Kazakhstan.

The end-user import certificate must contain the following information:

(1) The full name of the importer and his/her address (where an intermediary is acting as importer);

(2) The full name and address of the end user;

(3) The country of the end user;

(4) The name, quantity and code of the goods in the commodity nomenclature of foreign economic activity of the Commonwealth of Independent States (CIS);

(5) A guarantee that the goods will be used only for the needs of the country of the end user and will not be re-exported or transferred to third countries without the permission of the authorized Kazakh government agency;

(6) The last name, first name and patronymic of the official signing the end-user certificate, his/her signature and post, and the stamp of the authorized agency of the importing country;

(7) The date of issuance of the end-user import certificate.

Nuclear and special non-nuclear material, dual-use goods and technology, facilities and equipment that could be used in their production may be exported to countries that do not possess nuclear weapons (countries that are not permanent members of the Security Council) only where there are assurances from the competent government agencies of these countries that the exported items they receive and nuclear or special non-nuclear material, dual-use goods, facilities and equipment produced from them or by using them:

(1) Will not be used for the production of nuclear weapons and other nuclear explosive devices or for any military purpose;

(2) Will be subject to International Atomic Energy Agency (IAEA) verification (safeguards) for the entire period of their actual use, in accordance with the safeguards agreements between the receiving countries and IAEA;

(3) Will be secured through physical protection measures no less stringent than those recommended by IAEA;

(4) Will not be re-exported (exported) or transferred from the jurisdiction of the receiving country unless the conditions specified in subparagraphs 1 to 3 of this paragraph are met; in the case of uranium enriched to more than 20 per cent, plutonium or heavy water, the exported items themselves may not be re-exported or transferred without the written consent of the central executive agency for atomic energy of Kazakhstan.

The authorized Kazakh agency decides whether to issue the licence within the period established by law.

Where government authorization is required for the export and import of goods under licence, the authorized agency draws up the licence once the Government of Kazakhstan has issued a decision to that effect.

In specific cases, goods may be exported and imported without the adoption of a special decision by the Government. Such cases include the export and import of:

(1) Special bought-in components for arms and military hardware to enable Kazakh industrial enterprises to produce and maintain military goods within the framework of inter-factory cooperation with enterprises of foreign countries;

(2) Special bought-in components to enable military goods to be produced in foreign countries under a Kazakh licence;

(3) Spare parts, training and auxiliary equipment for arms and military hardware previously supplied to foreign countries for the purpose of servicing and maintenance, including where serially produced bought-in components are used in place of items withdrawn from production.

In these cases, goods are exported and imported under contracts and licences.

A licence issued for the export of goods to one State may not be used for their export to another State. A licence issued to one licensee may not be transferred to other entities or persons.

Issuance of a licence may be refused on the grounds specified in Kazakh legislation.

Where issuance of a licence is refused, the exporter (importer) is provided with a written reply stating the grounds on which the decision was based within the period established for the issuance of the licence.

The authorized agency has the right to suspend a licence for a period of up to six months, indicating the reason for the suspension.

A licence may be suspended for the following reasons:

(1) Submission by the exporter (importer) of a written request to that effect;

(2) Failure by the exporter (importer) to fulfil the requirements contained in the licence;

(3) Identification of inaccuracies in the information submitted by the exporter (importer) to obtain the licence;

(4) Violation by the exporter (importer) of Kazakh legislation on licensing and export control.

The exporter (importer) and the customs agency are notified in writing of the decision to suspend the licence within three days of the date on which the decision is taken.

After the factors that led to the licence's suspension have been addressed, the licence is reinstated; the exporter (importer) and the customs agencies are notified in writing by the authorized agency.

Where necessary, the end use of the goods may be inspected. Inspections are conducted at the site where the goods are used by a commission the composition of which must be approved by the Ministry of Industry and Trade.

The commission is composed of representatives of Government agencies participating in the export control system and also exporters (manufacturers) of goods.

Embassy officials of the Republic of Kazakhstan in the relevant countries of inspection and other authorized organizations may also conduct end-use inspections.

Recipient countries are notified through the Ministry of Foreign Affairs of Kazakhstan when inspections of foreign importers (end users) of goods are conducted.

The results of the completed inspections are submitted by the commission to the authorized agency, which informs the Ministry of Foreign Affairs and the National Security Committee of any end-use violation that is detected for appropriate action to be taken.

When exporting products from Kazakhstan, exporters must submit the following to the authorized agency:

(1) Copies of the customs declaration within three days of shipment of each consignment of goods;

(2) Information on the delivery of goods to the importer (end user);

(3) Information supported by copies of bank statements on all the payments made for the goods delivered.

Within 10 days of completion of delivery by the exporter (importer) of the entire cargo, the customs agency indicated on the licence at which the original licence is located sends a copy of the licence with the appropriate proof of delivery, notarized stamp and signature of the chief of the relevant customs agency to the authorized agency.

The authorized agency maintains a databank on the export (import) of goods on the basis of the documents submitted to it in accordance with the Rules.

In the case of export of the goods mentioned in paragraph 7 of the Rules, the exporter must within five days submit copies of the licences received and proof of export of goods beyond the customs borders of Kazakhstan to the Government agency responsible for nuclear energy use.

At the request of the authorized agency and the National Security Committee, customs agencies submit the necessary information on the transport of goods in the territory of Kazakhstan.

The customs agencies monitor the export and import of goods subject to export control across the customs borders of Kazakhstan.

(c) Brokering

The laws of Kazakhstan specify that the last name and location of brokers involved in transactions concerning firearms and explosives must be indicated. In accordance with article 397 of the Customs Code, customs brokers have the same rights and obligations as persons authorizing them to represent their interests with respect to customs agencies.

Under article 29 of the Customs Code, while carrying out their duties customs agencies must cooperate with the customs and other agencies of foreign States and international organizations in accordance with the international treaties to which Kazakhstan has acceded.

(d) Stockpile management and security

The Government of Kazakhstan has issued decrees on eligibility criteria for the licensing of activities involving the development, production and sale of explosives and pyrotechnical substances and devices for their use, and for the licensing of activities involving the development, production, repair, trade, acquisition and exhibition of military firearms and ammunition, specifying the requisite security measures for carrying out those activities, including permits from the competent Government agencies. Such permits are generally based on findings by internal affairs agencies on record-keeping procedures and compliance with the conditions for the storage and transport of explosives and weapons; by the State fire-safety agencies on whether the declared activities meet fire-safety requirements; and by environmental, health and mining oversight agencies.

In the case of transit, a Government decree provides that dangerous cargo must be accompanied by an armed guard. The declarant provides the necessary guarantees (attaches the necessary documents), as follows:

(1) Confirmation by the competent official agency of the country of the declarant that the system of early warning and emergency relief measures to mitigate the consequences of possible accidents during such transit is operational;

(2) Documents specifying the responsibility of the declarant for ensuring the physical protection of military cargo, nuclear material and equipment, special non-nuclear material, equipment and nuclear-related dual-use material, radioactive material, explosives and toxic substances conveyed in transit through the territory of Kazakhstan;

(3) Documents certifying the consent of the shipper of goods subject to export control to take such cargo back in the event that the delivery of the cargo to the consignee turns out to be impossible for reasons beyond the control of the consignee;

(4) Documents providing financial guarantees of civil liability for losses and damage caused by third parties;

(5) Documents guaranteeing that the declarant will reimburse the costs related to conducting inspections of the actual conditions of transport and also possible temporary storage, return shipment, expert examination and other necessary steps by the executive agencies in the event that violations of the existing regulations of Kazakhstan are detected, including the conditions of the permits issued by the competent nuclear and radiation safety agencies of Kazakhstan and also the costs connected with the need to enforce the law where violations are detected and/or return the cargo to the State of export.

The law and the Government decree on export control provide for the possibility of inspections by the competent agencies of the country of end use of goods indicated in the contract and of access by representatives of the authorized agency and other State agencies of Kazakhstan participating in the export control system to inspect the end use of goods and verify the obligation of end users to keep records of the work done during the use of goods.

If necessary, the declarant must provide access to authorized representatives of the authorized agency and other Government agencies of Kazakhstan participating in the export control system for inspection of goods prior to shipment.

Other aspects are specified under the current legislation on criminal procedure.

On the basis of protocol decision No. 2 of the Security Council of Kazakhstan of 5 March 2004, in order to verify the reliability of companies and persons engaged in transactions involving special-purpose goods (including weapons, ammunition and explosives), the Ministry of Foreign Affairs and the intelligence services verify the authenticity of the import certificates from end users of the importer country submitted by such companies and persons and also take other necessary steps.

(e) Law enforcement/illegal trafficking

In accordance with the Presidential Decree "On measures to prevent and suppress terrorism and extremism", efforts to control the spread of international terrorism, armed separatism and other forms of extremism are carried out directly by the internal affairs and national security agencies, the guard service of the President and the Ministry of Defence.

The customs agencies carry out customs control within their area of competence to detect and suppress smuggling of weapons, ammunition and military equipment.

In the light of the global situation, the customs agencies have taken steps to strengthen entry points from the south, south-west and west. Decision No. 400 of the Customs Control Agency of Kazakhstan of 28 September 2004 specifies the procedures for customs control and processing of the international transport of radioactive fissile material.

In accordance with the State programme to combat terrorism and other forms of extremism and separatism in the Republic of Kazakhstan, within the framework of the budget programme, the Customs Control Committee of the Ministry of Finance has been allocated funds to upgrade the technical equipment of the customs agencies.

In addition, the Canine Centre of the Customs Control Committee is training canine specialists in the use of search dogs of customs and other law enforcement agencies to detect explosives.

The Republic of Kazakhstan is a member of the International Criminal Police Organization — Interpol.

(f) National point of contact

Kazakhstan does not have a national point of contact to act as liaison with other States on matters relating to the prevention of access to weapons by terrorists.

Astana, 22 December 2004